

**Letter of Findings: 01-20140605.LOF  
Individual Income Tax  
For the Year 2011**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in the Letter of Findings.

### **HOLDING**

Individual established that he had correctly reported his federal adjusted gross income. The Department's assessment of additional individual income tax was therefore incorrect.

### **ISSUE**

#### **I. Individual Income Tax - Adjusted Gross Income.**

**Authority:** IC § 6-3-1-3.5; IC § 6-3-2-1; IC § 6-8.1-5-1; Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-1](#).

Taxpayer protests the assessment of additional individual income tax.

### **STATEMENT OF FACTS**

Taxpayer is an Indiana resident who practices law in Indiana. On November 3, 2014, the Department issued a Proposed Assessment that made upward adjustments to both Taxpayer's reported 2011 federal adjusted gross income ("AGI") and Taxpayer's 2011 individual income tax liability. On November 14, 2014, Taxpayer protested that assessment. This Letter of Findings ensues. Additional facts will be provided as necessary.

#### **I. Individual Income Tax - Adjusted Gross Income.**

### **DISCUSSION**

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to an agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

A desk audit determined that Taxpayer had underreported his federal AGI, because Taxpayer's 1099-MISC forms showed substantially more Indiana income than Taxpayer had reported. Taxpayer disputed this determination. Specifically, Taxpayer asserted that (1) he is a plaintiffs' personal injury lawyer; (2) the 1099-MISC forms reflected the total amounts he had recovered on behalf of clients in settlements; (3) he had actually received only a percentage of these amounts in compensation for his services; and (4) his reported federal AGI was therefore correct. Prior to the scheduled hearing, Taxpayer provided the Department with information confirming that his reported federal AGI was correct.

[45 IAC 3.1-1-1](#) defines "adjusted gross income" as follows:

For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

- (1) Begin with gross income as defined in section 61 of the Internal Revenue Code.
- (2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.
- (3) Make all modifications required by [IC 6-3-1-3.5\(a\)](#).

See also IC §§ 6-3-1-3.5(a), 6-3-2-1(a). Thus, under Indiana law the calculation of individual income tax is predicated on a taxpayer's federal AGI. Having established that he correctly reported his 2011 federal AGI, the Taxpayer carried his burden to prove that the Department's assessment was incorrect

### **FINDING**

Taxpayer's protest is sustained.

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